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### Supervision of Investment Companies in the Prevention of Illegal Investment Practices

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#### **Abstract**

The practice of illegal investment which is often referred to as bulging investment, in this case the community is promised to get a fixed profit / interest every month even though the company is losing money. This can be seen, this form of investment is clearly unnatural, funds are highly speculative and seek to avoid banking regulations in collecting funds from the public in the form of deposits. Legal awareness and understanding of the law become an important part because there is thus compliance and legal protection for the parties. Investment law in this case is more closely related to rules based on banking law that explicitly threaten imprisonment and fines against bully investment actors, which point to the legal threat against those who carry out business activities without permission to raise funds from the public. This research is focused on the Banten Province. This is because bulging investments are prone to occur in Banten Province. One contributing factor is Banten, one of the provinces that is very close to the capital of Indonesia, namely Jakarta. The purpose of this research is to find out how efforts can be made to oversee every investment company operations, especially to avoid the existence of illegal investment practices in the community.

**Keywords:** *Supervision; Investment; Illegal*

#### **Introduction**

The process of globalization in the financial system and rapid advances in information technology and financial innovation have created a very complex, dynamic, and inter-related financial system between financial sub-sectors, both in terms of financial products and institutional services. In addition, the existence of companies in the form of financial services institutions that have ownership relationships in various financial subsectors has added to the complexity of transactions and interactions between financial service institutions in the financial system (Hermansyah, 2005).

The legal dimension governing the economy, ties business activities with certain regulations. Good economic activity always indicates that it has maximized profits, but this does not justify any means to get more profit. Therefore the law provides clear and definite boundaries with respect to what can and may not be done in business activities. With legal certainty, business activities make conditions comfortable for conducting economic activities (Sinuor, 2010).

Economic activity is based on the economic development of a country to be managed by sources of funds available to the community. For this reason, bank financial institutions and non-bank financial institutions manage the economic potential of the community so that it is effective for the community itself. One form of practice that develops in business activities in financial services is the investment practice model by promising high profits or profits. Considering the prospect of a large fundraising effort for profit, investment that develops in the community is basically an activity to raise funds from the community. In contrast to saving money used for money security by getting interest in financial service company companies, investment is used to invest in business objects that provide results, benefits derived from the difference in dividends (Arsil, 2013).

The practice of illegal investment which is often referred to as bulging investment, in this case the community is promised to get a fixed profit / interest every month even though the company is losing money. This can be seen, this form of investment is clearly unnatural, funds are highly speculative and seek to avoid banking regulations in collecting funds from the public in the form of deposits (Arsil, 2013). Without their consent in advance to the Financial Services Authority as the highest institution in the regulation and supervision of the financial services sector. Illegal investment activities carried out by way of collecting public funds by deviating and even avoiding the banking rules, is an activity that uses public facilities to carry out business activities. Thus it is necessary to look at the authority possessed by the Financial Services Authority in providing protection for the public against Illegal Investment activities, the practice of moral hazard in illegal investment activities occurs due to the weak system of supervision of financial institutions caused by several factors, namely:

- a. Weak system of financial supervision architecture in Indonesia;
- b. Lack of information exchange between financial supervision institutions;
- c. The high egocentricity among financial institutions supervisory institutions (Hermansyah, 2005).

The purpose of investment or investment is very contrary to the practice of bulging investment. Because it is detrimental, damages the legal order of investment, banking law, and impedes national economic activity. Basically, the negative impact of bulging investment is the growth and development of violations of the national legal system, such as violations of the provisions of article 46 of Law Number 7 of 1992 jo. Law Number 10 of 1998 concerning Banking.

Legal awareness and understanding of the law become an important part because there is thus compliance and legal protection for the parties. Investment law in this case is more closely related to the rules based on banking law which explicitly threaten imprisonment and fines against bullying investors, which point to the legal threat against perpetrators who carry out business activities without permission to raise funds from the public, which in addition are regulated and face criminal charges based on Article 46 of Law Number 7 of 1992 jo. Law No. 10 of 1998 concerning Banking, also regulated and threatened with criminal sanctions based on Article 59.

Based on criminal provisions against the bulging investment activities, it is closely related to corporate crime and the scope of criminal liability. A closely related problem is in practice and in a number of cases, the status of the legal entity is also unclear. In fact, to raise funds from the public it should be in the form of a legal entity that is part of business licensing or legality.

The law protects a person's interests by allocating a power to him to act in the framework of those interests. This allocation of power is carried out in a measurable manner, in the sense that freedom and depth are determined. Such power is called a right. That way, not every power in ordinary society is called a right, but only certain power, which is given by law to someone. That between rights and obligations towards a very close relationship. A person's right is an obligation of another person, so the right is a relation of the obligation (the correlative of a duty) which contains elements of being protected

and having an interest in the rights held, in addition there is also a will. Protection of the rights held is not only shown to the interests of these rights (Asshiddiqie, 2012), but the will to exercise rights which are still within the limits of their rights. Therefore the right to exercise their rights is interpreted as a permit to carry out certain actions, by imposing obligations on others by imposing sanctions. A person has a right even if the person has no interest, then the right is regulated based on the law. For this reason, the relation of rights and obligations to the legal relationship between the depositors and the bank is based on the agreement.

From the contents of the legal agreement based on public relations and financial service companies there are contractual relationships, namely legal relationships in the form of contractual agreements, this is the most important between the customer and the bank, contractual relationships are used and apply to all legal relationships. The contract law which is the basis for the relationship between financial service companies and the public as consumers is sourced from the provisions contained in the Civil Code Law on Contracts (third book) in article 1338 paragraph (1) of the Civil Code, that all agreements made are legally binding the same as the law for both parties (Fuady, 2003).

### ***Literature Review***

Indonesia is a country in development. To build a large capital is needed. The obtained capital can come from domestic and foreign capital. Foreign capital entering Indonesia is quite large. Based on data from 2010, total investment, particularly foreign investment invested by foreign investors was US \$ 16,214.8 million, with 3,076 projects. In 2011, the amount of foreign investment invested by foreign investors was US \$ 19,474.5 million, with a total of 4,342 projects, while in 2012, the number of foreign investments entering Indonesia was US \$ 24,564.7 million and the number of projects funded was 4,578 projects. Based on the data above, it appears that from year to year the amount of investment entering Indonesia is quite large.

The benefit of investment is the use of investment invested by investors in the host country, such as increasing the degree of public health, increasing the level of public education, infrastructure development and others. The causal factor, which in English, is called a contributing factor is the thing that influences investors in investing in the host country, such as, for example, to obtain maximum profits, and expand their business and others.

Investment has a very important position in national development, because the investment can be used to improve people's welfare. To increase investment, it is necessary to have legal rules that provide legal certainty for investors, both foreign and domestic investors. The law governing investment in Indonesia, namely Law Number 25 of 2007 concerning Investment.

The need for investment continues to grow because uncertainty in the future will always be there. Along with the development of the era of investment instruments are also increasingly diverse. Basically the purpose of people investing is to make some money. Investing is basically buying an asset that is faced with resale at a higher value in the future. One of the main reasons for investing is to have a better life in the future, reducing inflationary pressure and encouraging tax savings.

Investment always raises risks, but by understanding and managing investments properly, it is expected that the benefits obtained are greater than the risks. Investment decisions can be made by individuals or entities that have excess funds.

## ***Methodology***

Using the method of empirical normative juridical approach, which is an approach that focuses on aspects of norms or rules, so that the problem will be assessed and analyzed by referring to the applicable laws and regulations relating to the problem of supervision of illegal investment companies.

In this study using library research. The research literature aims to study, investigate and explore secondary data such as primary legal materials, secondary, and tertiary.

a. Primary Legal Materials include:

1. The 1945 Constitution of the Republic of Indonesia.
2. Law on Investment.
3. Financial Services Authority Regulations.

b. Secondary Legal Materials include: Books, journals, dissertations, research reports, and papers.

Literature study is carried out to collect secondary data through an assessment of laws and regulations, literature, research results, writings of legal experts, newspapers and magazines related to this research.

Drawing conclusions from the results of research that has been collected is done using qualitative juridical analysis methods, juridical because research departs from existing legislation as positive law. Qualitative, namely analyzing data that is based on efforts to find principles and information or other information obtained from library studies to find out its relation to the main problem.

## ***Discussion***

Financial institutions in Indonesia are generally divided into 2 (two), namely bank financial institutions and non-bank financial institutions. Bank financial institutions include commercial banks, Islamic banks, and Rural Credit Banks (general and sharia). Non-bank financial institutions include insurance, capital markets, pawnshops, pension funds, cooperatives, and corporate guarantee and financing institutions which can be categorized as financial institutions including leasing companies, consumer finance companies, and venture capital companies (Hasan, 2012).

The increasing middle class in Indonesia is one of the triggers for the rise of circulating investment products. This middle class has become the target of investment product marketers, both the financial and non-financial industries, which unfortunately are not followed by public knowledge related to various kinds of illegal investments that have been operating lately. Many people are invited to join investments that are designed to look like legal investments, and many people are victims. This is very detrimental to the community and in the efforts made by law enforcement are often constrained, due to the inadequacy of the laws and regulations that govern these activities. The impact of this is that it will erode legal business.

Indonesia's growing economic growth with a note that the addition of the middle class also seems to increase the potential for crime in the investment sector. Illegal investments are offered by investment companies to the public. People who are actively investing their assets are sometimes less alert and alert. This is due to ignorance or lack of public knowledge of finance, especially investment, racing against greed to gain as much profit or return as possible with the smallest effort and capital. In addition,

investment for some people is a new lifestyle. They are competing to follow the investment trend that is being intensively carried out by several companies with the lure of profitable returns.

According to Iman Sugema in the writing "Gold-Masked Fraud", usually the illegal investment organizers only have licenses as ordinary trading companies. In practice, they operate as investment companies by collecting funds from the public. The problem is, there are no regulations that prohibit trading companies from carrying out activities similar to financial companies. These words must be underlined because the company usually deliberately disguises financial transactions in the guise of buying and selling transactions (Widayati, 2013).

This research is focused on the Banten Province. This is because bulging investments are prone to occur in Banten Province. One contributing factor is Banten, one of the provinces that is very close to the capital of Indonesia, namely Jakarta. Reporting from Radarbanten.co.id in 2017, the Chairperson of the Investment Vigilance Task Force at the OJK said that Banten was the main target spot for perpetrators. Like Talk Fusion which is a company that has been laid off, but they are still doing activities. Like the sale of video chat applications, it is not the products that are in demand by the community but the bonuses, because if they capture the participants it will automatically get more income.

While quoted from mediabanten.com in 2019, Serang Kota Regional Police claimed that they were still investigating the alleged cases of social gathering and bulging investments by Husband, Al and Ys. The majority of victims are young mothers in their 30s around Banten. Regarding bulging investments, the perpetrators do not have a company, but only ask for money from friends and people they know, with the reason to play projects and work on other jobs.

In addition, according to other electronic media news sources, dozens of participants in the arisan and allegedly illegal investments rushed to the Serang Kota Police Secretariat in December 2019. The victim named Alin (28) trapped the perpetrators to be caught by the police. Alin also claimed to have lost hundreds of millions. The money given to the perpetrators for illegal investment reaches Rp. 80 million, while the social gathering value reaches Rp. 135 million. Angry, she asked her husband to contact the perpetrators on the pretext that he would re-invest his money in the amount of Rp. 60 million. The condition is that the offender must invite other fellow actors together to take the money. In addition, another victim named Elvina (34), a career woman in the Tangerang area, told me that the perpetrators of fraud were her little friends. Elvina even lost up to Rp. 360 million, which was transferred to the offender's account since 2018.

The system in regulating and supervising the financial services sector in Indonesia since the enactment of Law Number 21 of 2011 concerning the Financial Services Authority, has given birth to an institution that is independent and free from interference from other parties, has the function to implement an integrated regulation and supervision system for all activities in the financial services sector. The Financial Services Authority as an independent institution is expected to minimize crime in the banking and non-banking financial institutions and systems which are predicted to continue to occur by means of investments that offer promises of benefits to consumers or the public that are greater than the provisions on banking deposit interest. It is also expected to protect the interests of consumers and the public against investment crimes in the financial services sector.

The basis for establishing the Financial Services Authority itself is an amendment to article 34 of Act Number 3 of 2004 concerning Amendments to Act Number 23 of 1999 concerning Bank Indonesia (BI). According to the explanation in Article 34 of Law Number 3 of 2004, the Financial Services Authority is independent in carrying out its duties and its position is outside the government and is obliged to submit reports to the Supreme Audit Board (BPK) and the House of Representatives (DPR). Since the enactment of Law Financial Services Authority on 22 November 2011 policy of national law

began introducing a new paradigm in applying the model of regulation and supervision of the financial industry in Indonesia.

The Financial Services Authority (OJK) as the agency that functions to implement a system of regulation and supervision that is integrated to all activities in the financial services sector as mandated by Article 5 of Law Number 21 Year 2011 concerning OJK must organize a form of legal protection for these investors, in order to provide legal protection to investors as consumers in the form of investments.

OJK recorded a number of public reports regarding companies and / or investment products offered that were not under the authority of OJK. The companies and / or investment products offered can be suspected to be illegal or fictitious companies and / or products, so the public is expected to be cautious in investing. Of this amount, public complaints consisted of money investments, foreign exchange investments, online investments, gold investments, promissory notes, clothing investments, foreign stock investments, pulse investments, investments in agricultural products, plants and plantations, investments in electronic equipment products, investment savings sharia profession (TIPS), futures and commodity investment, business investment investment, tour and travel investment, medical equipment investment, laying hens investment, property rental and sale investment, property or home property investment, investment in the real sector and import export, investment hospitality, vehicle investment and pilgrimage savings investment.

Theoretically, there are 2 (two) flows in terms of supervision of financial institutions. On the one hand there is a channel which says that supervision of the financial industry should be carried out by a single institution. On the other hand there are streams that argue that financial industry supervision is more appropriate if carried out by several institutions (Widayati, 2013). The Financial Services Authority conducts integrated supervision, so that in carrying out its duties it is integrated in accordance with the authority to take community loss prevention measures (Widjanarto, 2007).

Balance in protecting the community and developing the financial industry, there is a market conduct with the fulfillment of people's rights and obligations increased trust by increasing the behavior of financial service companies in designing, compiling and conveying information, offering, making agreements, on products and services and resolving disputes and handling complaints. In this case, the Financial Services Authority can support the interests of the national financial services sector so as to increase national competitiveness (Hermansyah, 2005).

The 2 (two) objectives aimed at protecting the community are to increase community trust in every activity and business activity in the financial services sector, and provide opportunities and opportunities for the development of the company in a fair, efficient and transparent manner. On the other hand, the public has an understanding of the rights and obligations associated with financial service companies regarding characteristics, services and products so that in the long run the financial industry will get positive benefits to spur increased efficiency in response to demands for more excellent service to its services.

Law Number 21 of 2011 concerning the Financial Services Authority as the legal basis for the establishment of institutions basically contains provisions on the organization and governance of institutions that have regulatory and supervisory authority over the financial services sector. Whereas the provisions regarding types of financial services products, scope and limits of financial service institution activities, qualifications and criteria of financial service institutions, soundness level and prudential arrangements as well as provisions regarding financial services sector supporting services and so forth which deal with supporting services in the financial services sector are regulated in a separate sector law (Pakpahan, 2012).

Things were behind the enactment of Law Financial Services Authority, which is (Pakpahan, 2012):

- a. The financial system and all financial service activities that carry out the intermediation function for various productive activities in the national economy are one of the important components in the national economic system.
- b. The process of globalization in the financial system and rapid progress in information technology and financial innovation has created a very complex, dynamic, and inter-related financial system between the financial sub-sectors both in terms of products and institutions.
- c. The existence of financial service institutions that have ownership relationships in various financial subsectors (conglomerates) has added to the complexity of transactions and interactions between financial services institutions in the financial system.
- d. The number of cross-sectoral problems in the financial services sector, which include moral hazard measures, lack of optimal protection for consumers of financial services, and disruption of financial system stability.

To carry out the regulatory and supervisory duties in the Banking sector as referred to in Article 6 letter a, the Financial Services Authority has the authority regulated in Article 7:

1. Regulations and supervision of bank institutions which include:
  - a. Permits for the establishment of banks, opening bank offices, articles of association, work plans, ownership, management and human resources, mergers, consolidations and acquisitions of banks, and revocation of bank business licenses; and
  - b. Bank business activities, including sources of funds, provision of funds, hybrid products, and activities in the service sector.
2. Regulations and supervision regarding bank health including:
  - a. Liquidity, profitability, solvency, asset quality, minimum capital adequacy ratio, maximum lending limit, loan to savings ratio, and bank reserves;
  - b. Bank statements related to bank health and performance;
  - c. Debtor information system;
  - d. Credit testing (credit testing); and
  - e. Bank accounting standards.
3. Regulations and supervision regarding bank prudential aspects, including:
  - a. Risk management;
  - b. Bank governance;
  - c. The principle of getting to know customers and anti money laundering;
  - d. Prevention of financing terrorism and banking crimes;
  - e. Bank inspection.

Implementation of the regulatory tasks referred to in Article 6, the Financial Services Authority has the authority regulated in Article 8 of the Financial Services Authority Act:

1. Establish regulations for implementing the Financial Services Authority Law;
2. Establish legislation in the financial services sector;
3. Establish regulations and decisions of the Financial Services Authority;
4. Establish regulations regarding supervision in the financial services sector;
5. Establish policies regarding the implementation of the duties of the Financial Services Authority;

6. Establishing regulations regarding the procedure for stipulating written orders for financial service institutions and certain parties;
7. Establishing regulations regarding the procedure for determining statutory managers in financial service institutions;
8. Establish organizational structure and infrastructure, as well as manage, maintain, and administer wealth and obligations; and
9. Establish regulations regarding the procedure for imposing sanctions in accordance with statutory provisions in the financial services sector.

The implementation of supervisory duties as referred to in Article 6, the Financial Services Authority has the authority regulated in Article 9 of the Financial Services Authority Act:

1. Establish operational oversight policies on financial service activities;
2. Oversee the implementation of supervisory duties carried out by the Chief Executive;
3. Conducting supervision, examination, investigation, consumer protection, and other actions towards financial service institutions, actors, and / or supporting financial service activities as referred to in legislation in the financial services sector;
4. Give written instructions to financial service institutions and / or certain parties;
5. To appoint a statutory manager;
6. Determine the use of the statutory manager;
7. To impose administrative sanctions on those who violate the laws and regulations in the financial services sector; and
8. Give and / or revoke:
  - a. Business permit;
  - b. Individual permission;
  - c. The effectiveness of the registration statement;
  - d. Registered certificate;
  - e. Approval for conducting business activities;
  - f. Ratification;
  - g. Approval or stipulation of dissolution; and
  - h. Other stipulations, as referred to in legislation in the financial services sector.

Provisions for supervision of financial services institutions by the Financial Services Authority must be carried out in an integrated or integrated manner in order to run in line with the philosophy of the Financial Services Authority Act. This law must be able to make predictions, namely whether it can later provide guarantees and legal certainty for the financial services industry especially the impact of the supervision structure on the health aspects of the financial service system system which includes the safety and health of financial service institutions, systemic stability and the development of service institutions finance. This is important because the regulation and supervision of financial service institutions is an integral part of the financial services system.

The increase in illegal investment fraud in Indonesia is caused by several factors, namely the lack of public knowledge of the financial sector, especially knowledge of legal investment and the condition of people who are greedy want to get high returns by ignoring risk. Victims of illegal investment are not only the middle to lower classes, but also upper class people who can even be categorized as educated or well educated. There are 2 (two) categories of people that are targeted by illegal investment companies, namely people who do not know that the company or investment products offered do not have a permit (unclear legality) and people who already know the company license, but expect a return that is high.



When viewed pattern carried in the product offering illegal investment schemes generally have a money game. Where can be seen that the characteristics of the money game is simply turning money in a way on the spot without using or playing money in business activities or productive business. In general, that the usual offer is done secretly or secretly, if they dare to openly, the service should be easier. But if it's done in secret, we need to be vigilant too. Usually such investment companies do more clandestinely and the information is spread by word of mouth to avoid supervision by the government.

Companies or parties that make illegal investment offerings are mostly not Financial Services Institutions (LJK), so the companies or parties are not registered and supervised by OJK. Therefore OJK cannot ascertain the legal aspects of the company. Related to this in an effort to participate against illegal investment offers that are detrimental and unsettling to the public, OJK has two strategies, namely:

1. Preventive;

Disseminating and educating the public about the characteristics of fundraising activities and the management of illegal investments coordinating with law enforcement and regulators in repressive regions. And help coordinate efforts between related agencies to speed up the handling process through the cooperation framework of the Task Force for Handling Alleged Unlawful Acts in the Field of Fund Raising and Investment Management or often known as the Investment Alert Task Force.

2. Repressive;

Cases of public complaints related to illegal investments reported to the OJK will be coordinated with the Investment Alert Task Force to handle them.

Financial literacy has become an important key to minimizing financial risks. Therefore, literacy is a big homework for the government and financial institutions so that people are smarter in managing their finances. To realize this, certainly not in an instant way, because financial literacy requires quite a long time. Gradually but surely, breakthroughs in literacy must be encouraged, because public knowledge of financial products is still very minimal. Based on a survey conducted by the FSA, the financial literacy index has only reached 21.8%. Which means that out of 100 people only 21 people know and know about financial institutions, then the inclusion rate is 59.7% or out of 100 people there are only 59 people who have been able to access financial products. One example that is detrimental to society is the problem of illegal investment. If people do not understand proper financial management, as a result the community is deceived by offers that sound tempting. This is evidence that financial literacy is a priority by the Financial Services Authority. Therefore, the Financial Services Authority is committed to continuing to promote financial literacy. One of the steps taken is an anti-illegal investment campaign.

Education and literacy are very important in order to minimize fraud cases against illegal investments. Where the deceptive methods carried out today are increasingly diverse even using the religious mode. FSA continues to carry out campaigns to remote areas to provide a good understanding of literacy to the community, especially in regions and cities. The approach was taken from city to city, because usually the targets of operations of illegal investment service providers were people in cities where economic activity was active in which the velocity of money in the city was quite large. Another mode that is used is by giving a lucrative promise as it will yield 30% a month. Though usually the return on investment within one year is still less than 30%. Therefore OJK will reactivate the Investment Alert Task Force. Through the collaboration, the Investment Alert Task Force has stopped the 29 activities and has been processed by the Police.

On the other hand OJK does not stop being proactive in visiting the parties that make the illegal offer. The reason is if the OJK is only waiting for reports from the public, then the amount that OJK has stopped was so small that the losses incurred to the public from this illegal investment are very large. This does not only apply to investment service providers that are categorized as illegal, such as actually not having a permit. This also applies to investment service providers who already have licenses and operate outside the authority in their licenses.

## Conclusion

From the description above, it can be concluded that those who oversee investment products in the community are the BKPM and OJK institutions as mandated by the law, but in practice, these two institutions open licenses to companies that offer illegal investment offers, making it difficult to ascertain aspects of the legality therefore formed a collaboration Task Force for Handling Alleged Unlawful Acts in the Field of Fund Raising and Investment Management or often known as the Investment Alert Task Force to coordinate. The next chapter will discuss the role of the Investment Alert Task Force to supervise and supervise companies that offer products or entities that are not licensed or illegal.

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